NOTES ON CURRENT AND RECENT EVENTS.

PROBATION OFFICERS IN NEW YORK.—The many states which have probation laws with no provision for probation officers in connection with their criminal courts, especially those situated in rural communities, would do well to look into the work which the state of New York is doing along this line. The New York laws of 1908-1909 permitted the appointment of salaried probation officers in connection with all county courts and with all other courts of criminal jurisdiction sitting in the counties. Probation officers have now been appointed in connection with most of the criminal courts in the counties of New York state. The New York State Probation Commission has issued a valuable pamphlet on *County Probation Officers*, describing their duties, telling what probation is, giving illustrative cases and showing how a county system of probation should be organized, and its advantages. The pamphlet may be obtained by addressing the State Probation Commission, The Capitol, Albany, New York. C. A. E.

THE NEW YORK STATE PROBATION COMMISSION.—It is evident that a state system of probation can hardly be expected to work well without a State Probation Commission to supervise and control its work. The State of New York is one of the few states which has already recognized this fact and appointed a State Probation Commission, the president of which is Mr. Homer Folks, and the secretary, Mr. Arthur W. Towne. The second report of this commission (for the year 1908) is crowded with useful facts regarding the probation system. During the year 1908 a total of 10,434 persons were placed on probation in New York State; 320 probation officers supervised these probationers during the year. Appointments of probation officers were made for the first time during the year in 27 courts. The success of the probation system under the supervision of a competent probation commission seems assured by the report. Seventy-eight per cent of the 6,333 probationers who were released from probation were reported as improved in conduct. The total cost of the whole system to the state of New York for the year 1908 was about $62,000, whereas the cost of committing the same offenders to jails and to other institutions would have been many times that amount.

The value of the report is much increased by an appendix giving a careful citation of the American statutes of probation, juvenile courts, etc., enacted by the several states to January 1, 1909, and also appendices on New York state probation laws, on laws on probation passed in the United States, 1908, and finally a valuable supplementary bibliography on probation and juvenile courts. C. A. E.

COÖRDINATION OF CORRECTIONAL INSTITUTIONS.—Mr. O. F. Lewis, corresponding secretary of the Prison Association of New York, has written a valuable paper on "The Possible Coördination of the Correctional Institutions of the State of New York," which has been reprinted and is being circulated by the New York State Probation Commission. The paper points out in a clear way the advantages of a close coördination of all the institutions and features of the correctional and penal system of a state. It advocates the extension of the reforma-

tory system and the indeterminate sentence; the more direct control by the state of county institutions and of other minor correctional institutions; the wider extension of the probation law; the freeing of prison administration entirely from partisan politics; the establishment of labor colonies for the reformatory treatment of vagrants; hospitals for inebriates; and also segregation of imbeciles and feeble-minded persons who are frequently committed to prisons for crime. The paper presents a program which many states might do well to attempt to carry out in their correctional and penal system. The paper may be obtained by addressing the State Probation Commission, Albany, New York.

C. A. E.

PROBATION IN MASSACHUSETTS.—Judge Charles A. De Courcy has a very interesting article in the January number of the *Yale Law Journal* on the "Probation System of Massachusetts." Judge De Courcy describes in some detail the working of the Act of 1908 which established a State Commission on Probation in Massachusetts. Under the workings of this commission, Massachusetts has now eighty-three probation officers connected with its lower courts, and fifteen connected with its superior court. During 1909, there were placed on probation in the lower courts 12,713 persons, and in the superior court, 1,239. Judge De Courcy gives it as his opinion from his personal experience, that fully three-fourths of the cases, when intrusted to officers who possess sound judgment, tact, and devotion to their work, turn out well. He emphasizes that on the judges also will depend largely the results. They must not discredit the system by placing on probation persons who cannot be reasonably expected to reform without punishment. He is of the opinion that the probation system promises much for the future, and may perhaps be greatly extended even beyond its present limits. The system in Massachusetts is carefully organized and furnishes a good model for other states. C. A. E.

NATIONAL PROBATION OFFICERS' ASSOCIATION.—The National Probation Officers' Association met in St. Louis from May 18 to 25, inclusive, in conjunction with the sessions of the National Conference of Charities and Correction, and of the National Conference on the Education of Backward, Truant, Delinquent and Dependent Children. The subjects discussed related to the dangers of probation, the methods of probationary oversight of children, the organization of a staff of probation officers, the probationary treatment of men, the probationary treatment of women, practice and procedure in juvenile courts, the judge's part in probation as a reformatory agency, and the prosecution and treatment of persons guilty of adult contributory delinquency. One session was also devoted to the consideration of the report of a special committee on terminology, forms, reports and statistics. The chairman of the committee was Bernard Flexner of Louisville, Homer Folks of New York presided over the meetings, and the discussions were participated in by a large number of judges, probation officers and representatives of probation commissions and associations from various parts of the country. A. W. T.

DISTRICT ATTORNEYS' ASSOCIATION OF NEW YORK.—The district attorneys of New York state organized an association in the fall of 1909 and elected District Attorney William T. Jerome of New York County as its first president. The association held its second meeting in Albany in March, 1910, at which time District Attorney Francis A. Winslow of Yonkers and District Attorney

George H. Bond of Syracuse were elected president and secretary, respectively, for the ensuing year. A committee on legislation was appointed, and various phases of the work of district attorneys were discussed. An address delivered at the meeting by Assistant District Atorney Charles H. Nott, Jr., of New York City, on the suspension of sentence and probation in the New York Court of General Sessions, has been published in pamphlet form. A. W. T.

PENAL TREATMENT OF DRUNKENNESS.—One of the great problems of present criminal courts and correctional systems is the proper treatment of persons guilty of public intoxication. As has been frequently shown, from one-half to two-thirds of all the convictions in our minor criminal courts are convictions for public drunkenness. The State Charities Aid Association of New York State has issued a pamphlet on "The Treatment of Public Intoxication and Inebriety." It is supporting a bill which has been introduced in the New York Legislature to establish a board which shall have general control of the problem of dealing with public intoxication and inebriety, dealing with the different types of offenders, providing a hospital and an industrial colony to which persons may be committed who need institutional treatment, and providing also for officers to act as probation and parole officers for drunkards. The pamphlet gives, besides the arguments in favor of the proposed law, a good deal of information about the history of legislation concerning inebriates, especially the various plans which have been tried in England. C. A. E.

RELATION OF THE MEDICAL PROFESSION TO CRIME.—The *West Virginia Medical Journal* for March, 1910, contains three papers presented at the last annual session of the State Medical Association on the relation of the medical profession to crime. The first, by Dr. J. R. Bloss, of Huntington, deals with the "Sterilization of Confirmed Criminals and Other Defectives." Dr. Bloss states that the defective class are multiplying much more rapidly than the normal population and that marriage laws will not control their increase, since marriage is not necessary to increase among irresponsibles. Vasectomy fulfils every requirement and should be provided for by law in all of the states, as it is now in Indiana, Utah, California and Connecticut. Dr. Bloss's paper presents the results of his experience as physician of the West Virginia Insane Asylum. Dr. G. D. Lind, of Richwood, discussed the question, "What can the Medical Profession do to Prevent Crime?" advocating state laws authorizing vasectomy in the case of habitual criminals. Dr. G. H. Benton, of Chester, read a paper on "The Influence of Physical Defects on Personalities, Moral Obliquities and Crime," urging more careful study of the pervert and degenerate in order that there might be a better understanding of possible conditions which may cause or influence a physical or psychical process which may result in the commission of crime. F. G.

In the *Archives of Internal Medicine* for March, Dr. C. J. Bartlett and Dr. J. S. Goldberg, of New Haven, Conn., discuss "Blood Spots" from a medico-legal standpoint, arriving at the following conclusions: A blood spot falling only a few inches usually makes a round spot with a smooth border, although if the surface upon which it falls is rough there may be an irregular border. When the blood drop falls vertically, whether from a height of only one or two feet or as much as six feet, the height is of secondary importance in determining the size or shape of the drop or the amount of spattering. Within the

limits mentioned the character of the surface on which the drop falls is the chief factor in determining the degree of spattering. This is particularly true of the roughness or smoothness of the surface. Falling on a smooth non-absorbent surface from a distance of five or six feet, a drop may form almost no spatters, but the irregularities of the surface may cause marked spicules even if the height is much less than this. This size of the main blood spot made by a drop falling from three to six feet depends more on the original size of the drop than the height from which it fell. The thickness of the dried blood spots on non-absorbent or slightly absorbent surfaces is less the greater the height from which the blood fell. The general conclusions arrived at are that deductions as to the height from which the blood fell should be made very guardedly.

PROPOSED REFORMS IN THE ENGLISH LAW RELATING TO CORONERS' INQUESTS.—The British law regarding coroners' inquests, which dates from the thirteenth century, is about to undergo important changes. The committee appointed by the Home Secretary some fifteen months ago to investigate the subject has just issued a report. Under the present law, the coroner has power to order a post-mortem examination only for the purpose of an inquest. The committee thinks the coroner should have the power to hold a post-mortem without an inquest when the cause of death is unknown and when there is no good reason to suspect that the death is unnatural or violent. In this way the inquest, always a painful ordeal for friends and relatives, may be dispensed with. The committee also regards the fees allowed medical witnesses as inadequate. In most cases a proper post-mortem examination can only be made effectively by an expert, who, under the present law, cannot be paid more than five dollars. The committee also recommends that every coroner be empowered to call such medical witnesses as may be necessary and that coroners be given much wider discretion as regards medical costs. It is at present necessary for the coroner's jury to view the body, which the committee holds is disagreeable to many jurymen and is only occasionally useful, being as a rule entirely perfunctory. The present law regarding death certificates is also condemned, since at present any English physician can give a death certificate if he has seen the patient within a week of the alleged death. It is not even necessary for him to see the body or verify the fact of death. Consequently every opportunity is offered for premature burial and the concealment of crime. The committee recommends that physicians be required to inspect the body before issuing a death certificate. F. G.

THE LAW OF ABORTION IN FRANCE.—The French minister of justice has laid before the Chamber of Deputies a bill to modify the present law regarding abortion. Under the existing law the woman may be punished by imprisonment and hard labor. Consequently, there is at present almost no check on this offense. In 1908, out of 66 accused, 53 were acquitted, it being impossible to secure evidence. The proposed bill substitutes either an imprisoment or fine for hard labor and a minimum of five years in the house of correction. The bill also punishes incitement to abortion, being aimed at the propaganda in favor of the limitation of births which has been carried on through various channels. The bill imposes a penalty of imprisonment and fine for incitement,

whether the incitement is effective or not, by lectures, sale, exhibition, posting or distributing written or printed matter, sketches, models, drugs, instruments, etc. F. G.

OBLIGATION OF PROFESSIONAL SECRECY IN MATTERS OF CRIME.—Dr. A. Jaquet in the *Correspondenz-Blatt für Schweizer Aerzte*, Basel, for March 10, discusses the obligation of professional secrecy. The ordinances at Basel, Switzerland, require that any public official learning of any crime by virtue of his office must report it to the authorities. Physicians in public hospitals have inquired of the authorities whether this ordinance applies to cases of which the medical staff may learn in treating patients in their charge. If medical men are forced to comply with this law, women seeking treatment following abortion will avoid the hospital and will trust exclusively to quacks and others on whose discretion they think they can rely. . The authorities have been reconsidering the ordinance in consequence and the question has been discussed in the local medical society. Jaquet reviews the laws in regard to privileged communications in various European countries and summarizes the opinions of leading medical men. He favors greater reticence on the part of the physician even when the interested parties release him from the obligation of secrecy. Confidences gained in a public hospital should be respected the same as in private practice. Legal recognition of privileged communications is an advantage to both physicians, patients and the public. F. G.

NUMBER OF INMATES IN ASYLUMS OF THE UNITED STATES.—The *Journal of the American Medical Association* for April 30, in reply to an inquiry regarding the number of persons in reformatory, penal, idiocy and insane asylums in the United States, gives the following answer from Hon. E. D. Durand, Director of the Census, to whom the inquiry was referred: "According to the returns of a census of the insane and feeble-minded in institutions, there were in hospitals of the United States on December 31, 1903, 150,151 insane patients, and during the year 1904, 49,622 were admitted and 41,733 were discharged. On page 3 of the report it is stated that the statistics of paupers in almshouses for 1904 give 11,807 inmates as insane; and unquestionably a diligent search would have shown a larger number of insane persons who had not passed into the care of any institution. The figures for December 31, 1903, and for those admitted during the year 1904 are for patients in public and private hospitals, treating only the insane or having a separate department for the treatment of this class of patients. In institutions for the feeble-minded there were 14,347 patients on December 31, 1903, and 2,599 were admitted during 1904, while 1,435 were discharged. The term 'discharged' includes those actually discharged and also those who died or were transferred to other institutions.

"Our report on prisoners and juvenile delinquents in institutions shows that there were 81,772 adults in penal institutions of the United States June 30, 1904. These included prisoners in U. S. civil prisons, state prisons and state and county penitentiaries, reformatories for adults, county and municipal jails, prisons and workhouses. Persons imprisoned for debt were not included. On the same date there were 23,034 juvenile delinquents in institutions."

F. G.

THE ALCOHOLIC REPEATER.—The State Charities Aid Association of New York has issued a pamphlet on the "Alcoholic 'Repeater' or Chronic Drunkard,"

which is of much interest to those who have to deal with habitual minor offenders. The study is one of several hundred cases treated in the alcoholic ward of the Bellevue Hospital, in the city workhouse, and in various public institutions of New York City. The enormous expense inflicted on the community by the chronic drunkard who is repeatedly imprisoned, or who repeatedly receives treatment in various public institutions, is shown very clearly. It appears, for example, that the persons treated in the alcoholic ward in Bellevue Hospital occasion more than one-fourth of the total expense of that ward. In the workhouse, cases were found in which there had been as many as from thirty to sixty different commitments, the expense occasioned by such a single repeater to the city in institutional costs alone being sometimes several thousand dollars.

The pamphlet sums up the matter by showing the proper methods for eliminating the repeater. It says, "The remedy for the present intolerable conditions can be stated very briefly. The short sentence and the petty fine, which in the vast majority of cases amounts to a short sentence, have proven an absolute and unqualified failure and should be abolished. For these should be substituted:

"1. Release first offenders without their appearance in court. This has been done in Massachusetts since 1905, and the practice has received almost universal approval. It results in the release of from 40 to 50 per cent of all cases in the large cities of the state.

"2. Release all cases that are not hardened and fixed in their habits, under the supervision of a probation officer.

"3. Add a fine to be paid in instalments to the probation officer in cases that do not respond to simple probation.

"4. Commit no person to any institution until all other means have been exhausted.

"5. Commit those persons, who *must* be removed from their surroundings, on an indeterminate sentence to an institution where they can be isolated from alcohol, be given medical care and treatment and be supplied with an abundance of healthful work and as much sunlight and fresh air as is possible.

"6. Commit no inebriates to the workhouse or any corresponding institution unless such person has decided criminal tendencies in addition to his habits of excessive use of alcoholic liquors. When it is necessary to commit to the workhouse, commit the person on an indeterminate sentence with a minimum period of one year and a maximum period of three years.

"The remedy proposed is simple, rational, economical, effective. It proposes an expenditure of funds, now wholly wasted, in such a way as to secure definite returns to both the individual and the community." C. A. E.

THE LONDON PENAL REFORM LEAGUE.—This new organization in England has for its objects: first, to obtain and circulate accurate information concerning criminals and their treatment; second, to promote a sound public opinion on the subject; third, to help to bring about a more complete and effective coöperation between the public and public servants for the reclamation of criminals by a curative and educative system. The second annual report of the Society makes various recommendations for the better working of the Probation of Offenders Act. It gives an account of the Borstal Institution and of the criticisms based on visits. The League publishes tracts for the education of the public, such as: Probation as a Spiritual Movement, Discipline, The Indeterminate

Sentence and Reformatory Methods, and the like. The League will be represented at the forthcoming International Prison Congress by the Honorable Secretary, Captain Arthur J. St. John. C. R. H.

THE IOWA BAR ASSOCIATION ON REFORM OF CRIMINAL PROCEDURE.—The Report of the Proceedings of the Iowa State Bar Association at its fifteenth annual meeting at Marshalltown, Iowa, June 24 and 25, 1909, contains evidence which shows that this learned body is much interested in the reform of criminal procedure and generally in matters pertaining to the sciences of criminology and penology.

At one of the forenoon sessions, Prof. J. H. Wigmore delivered an address on the subject of "The Science of Criminology—Rules of Evidence in Criminal Cases." By way of preface to his address Professor Wigmore justly taxed the legal profession with taking too little interest in what is being done by workers in other lines. "Only the legal profession, it seems," says he, "is still unaware of the progress made in the last twenty years in the science that teaches how crime arises and is suppressed—the science of criminology. The main instrument for its suppression, the criminal law, is in their hands, but of the purpose, methods, and utility of that instrument, they take no pains to learn what science is doing and has still to do. The physician, the psychologist, the sociologist, the philanthropist, the penologist, are all doing something and are keeping abreast of what the others are doing. Our profession should awaken. As our fellow professions are not standing still, we shall be left entirely behind, unless we endeavor to catch up. The people will take from us the one talent which we have unworthily preserved and give it to other servants who have been more diligent."

After giving a brief sketch of the historical stages through which the development of criminal law has passed, Professor Wigmore proceeded to refer to the large contributions made by other sciences to the sum of our knowledge of penology and insisted that the legal profession should open its mind to these contributions of other sciences.

He then took up the subject of criminal procedure and observed that this branch of criminal science is one with which lawyers are chiefly concerned. Accordingly, if things go wrong in this department, the lawyers are exclusively accountable. He then called attention to certain rules of procedure which might be adopted to advantage, and enumerated other existing rules which might well be abolished. This all too brief paper is quite suggestive and instructive, though of course chiefly of interest to professional lawyers. (Iowa State Bar Association Reports, 1909, p. 114 *et seq.*)

At a later meeting of the same body, Justice Deemer of the Iowa Supreme Court took occasion to compliment the bar of his state on the circumstance that in Iowa much progress had already been made along the lines suggested by Professor Wigmore. In this connection Justice Deemer said: "We have the indeterminate sentence, and are attempting to make the punishment fit the criminal rather than the crime, and that was brought about chiefly by three members of this association. We have the juvenile court already established in Iowa."

In this connection it may be of interest to refer the reader to a discussion contained in the Annual Address of the President of the Iowa State Bar Association, which is found in the same Report. The address for 1909 was delivered

by James W. Bollinger of Davenport, Iowa, and deals with the topic "The Upward Tendencies in Our Proposed Reforms." Among other matters touched upon in this address is "The Thraldom of Technicalities" (pages 50, 51), and "The Amendment of Indictments"—both certainly subjects of much interest and moment at this time.[1]

INVESTIGATION OF CRIMINALS IN MASSACHUSETTS.—Interest in the scientific study of crime seems to be spreading. Governor Draper of Massachusetts, in pursuance of a resolution of the General Court, has appointed a commission of five persons to investigate the increase in the number of criminals, mental defectives, epileptics, degenerates and allied classes and to report to the General Court not later than January 15, 1911, the results of the investigation, together with such recommendations as it may deem necessary for the safety and protection of the commonwealth and its citizens. The members of the committee are: Dr. Walter E. Fernald of Waltham, superintendent of the Massachusetts School for Feeble-Minded; Hollis M. Blackstone of Bridgewater, superintendent of the State Farm; Everett Flood, superintendent Massachusetts Hospital for Epileptics; General Benjamin F. Bridges of Charlestown, warden of the Massachusetts State Prison; and Ernest V. Scribner of Worcester, superintendent of the Worcester State Hospital.

In this connection it may be noted that the Chicago Municipal Court has announced its intention of asking the city council for an appropriation to cover the cost of an investigation of criminality in Chicago, with particular reference to the hereditary and environmental conditions of criminals tried in the Municipal Court. J. W. G.

DEPORTATION OF ALIEN CRIMINALS.—A bill has been favorably reported by the Committee on Immigration and Naturalization of the national House of Representatives providing for the deportation after the expiration of his sentence of any alien who is hereafter sentenced for a term of one year or more for a crime involving moral turpitude and punishable by imprisonment in a state prison, unless the court imposing the sentence makes a recommendation to the Secretary of Commerce and Labor that he be not deported. The bill is approved by every member of the Immigration Commission, though a strong minority report was presented by four members of the Committee on Immigration. The majority report declares that an alien admitted to this country who thereafter abuses its hospitality to the extent of committing a major crime, should not be permitted to remain here. Aliens of the criminal class, says the majority report, injure the country of their adoption, cast discredit upon the whole foreign population, impose burdens upon the states and deter desirable foreigners from coming to America. The minority in its report criticizes the bill for being too drastic and sweeping in its effects. Moreover, the bill is objectionable to the minority because it does not specify the crimes for which the criminal is to be deported; it applies to misdemeanors as well as to felonies; and in most cases it would work a separation of the alien from his wife and children. In this connection it may be noted that by an amendment to the immigration laws, approved March 26 of the present year, the importation of women for the purpose of prostitution, or the holding of alien women for this or similar purposes, is punishable by imprisonment for not more than ten years

[1]Furnished by Prof. Thos. A. Street, University of Missouri.

and a fine of not more than five thousand dollars. Moreover, any alien who shall be found to be an inmate of a house of prostitution or who shares in the earnings af any prostitute shall be deemed to be unlawfully within the United States, and shall be deported to the country from which he immigrated.

J. W. G.

CHIEF KOHLER'S GOLDEN RULE POLICY IN CLEVELAND.—Chief of Police Kohler of Cleveland describes his much-discussed method of dealing with criminals as follows:

First: Juveniles are never to be placed in prison. They are to be taken home or the parents sent for and the child turned over to them for parental correction. *Second:* The members of the force are to use their kindly efforts in easing the friction and ill-temper between man and man, wherever and whenever it makes itself manifest. *Third:* The best policeman is the one who manages the offender with the least show or display of authority. *Fourth:* Some men fall through some unfortunate circumstances and are not criminal at heart, and should be treated accordingly; in which case the best results may be accomplished with a well applied reprimand. *Fifth:* Officers should have sufficient evidence of a competent character to secure conviction, before even considering the imprisonment of a person on any charge whatever. *Sixth:* Any apparent violators who are not known to be of good character and reputation are to be accompanied to the precinct station, where the matter will be carefully inquired into by the officer in charge and the proper action, as specified by the common sense policy, taken.

This policy went into effect January 1, 1908, and the results, he says, have surpassed all expectations. It has not only resulted in a large decrease in the number of arrests but has increased the number of arrests of real criminals, has done away with the blackmailing professional bondsman, who reaped a harvest out of the unfortunates placed in prison, and has driven from the city "practically all those whose livelihood depends upon swindling and robbing, while those who remain are under such close surveillance that it is almost impossible for them to operate successfully." The following comparative table shows the decrease in the number of arrests under the new system:

		Under the Old System.		Golden Rule Policy.	
		1906.	1907.	1908.	1909.
Total arrests	January	2,285	2,158	911	591
" "	February	2,016	2,257	829	391
" "	March	2,430	2,711	939	423
" "	April	2,801	2,434	907	427
" "	May	2,675	2,731	888	366
" "	June	2,766	2,503	882	469
" "	July	2,843	2,900	1,010	497
" "	August	2,749	2,898	1,015	673
" "	September	2,919	2,510	707	526
" "	October	2,770	2,351	704	477
" "	November	2,700	2,530	619	642
" "	December	2,782	2,435	674	536
Total arrests		31,736	30,418	10,085	6,018

J. W. G.

CRITICISM OF THE POLICE.

THE MENACE OF THE POLICE.—Under the above caption Mr. Hugh C. Weir has contributed two recent articles to the *World To-Day* (Jan. and Feb., 1910), in which he severely arraigns the American police for their inefficiency, corruption and brutality. Little of the truth concerning the wide prevalence and methods of the so-called "third degree," he asserts, has ever been told. In spite of the emphatic and persistent denials of the police, "third degree" methods, he asserts, are generally practiced by the American police, "with a brutality that has sent dozens of men and women with broken limbs, bruised bodies and wrecked minds to hospitals or asylums." Having failed to prevent crime by skill and intelligence, the police have resorted to brute force and intimidation to extort confessions from the innocent. He then proceeds to detail some of the methods of the "third degree," such as were used, he says, in the days of Nero—methods which it is difficult to believe would be tolerated in any civilized community. The "gentlemen of the police" are then put on trial, charged with responsibility for the enormous amount of crime now being annually committed in this country. Ten thousand persons are murdered in this country every year, we are told, and the cost to the country in dollars and cents is $3,500,000 a day. The articles abound in extravagant statements and many of the statistics which he produces in regard to the amount and cost of crime have no other foundation than his imagination, though it will readily be admitted that the increase has been very great. The author should be given an opportunity to substantiate his charges in regard to "third degree" methods before the select committee of the United States Senate recently appointed to inquire into this subject. J. W. G.

CHIEF OF POLICE SYLVESTER ON THE "THIRD DEGREE" METHODS.—At the recent annual meeting of the American Academy of Political and Social Science in Philadelphia, Major Richard Sylvester, chief of police of Washington, D. C., described the methods of the so-called "sweat box," which originated at the time of the great outbreak of crime at the close of the Civil War. The existence of any such contrivance in these enlightened days, he declared, would not be permitted for a moment.

"In this progressive age," he said, "when the heads of police departments, mainly at individual expense, gather in convention annually and advocate the establishment of separate houses of detention for women and juvenile offenders rather than at station houses, when these men endorse the probation system, when they study the infirmities and defects of criminals of record in order that the courts may be enlightened in these respects before penalties are imposed, when these members argue for kind treatment of the child and the establishment of juvenile courts, when they submit intelligent written discussions as to the humane treatment of prisoners, it should be argument sufficient to condemn any assertion that 'little drops of water,' or superheated moisture weep through the pores of a prisoner's skin through torture in a 'sweat box.'

"It is to be regretted that there are exceptions to such rules, but the members of the International Police Association, who number quite two hundred chiefs, have subscribed to the principles of humanity. There are officials who do not practice what they preach, some who are imposed upon by ignorant subordinates, but the well-disposed superiors will far outclass the others of their calling.'

"We have heard of the other vulgarity, the 'third degree.' Some of us have taken the genuine article. In police and criminal procedure and practice

the officer of the law administers the 'first degree,' so called, when he makes the arrest. When taken to the place of confinement there is the 'second degree' and when the prisoner is taken into private quarters and there interrogated as to his goings and comings, or asked to explain what he may be doing with Mr. Brown's broken and dismantled jewelry in his possession, to take off a rubber-heeled shoe he may be wearing in order to compare it with a footprint in a burglarized house or even to explain the blood stains on his hands and clothing, that, hypothetically, illustrates what is called the 'third degree.'

"The prisoner is cautioned by the reputable officer to-day that he need not incriminate himself, and, in some places, the authorities have blank forms in use stipulating that what a prisoner states is of his own volition and without coercion. In the conduct of their investigations there is no law to prevent the officers questioning any person who, in their opinion, may be able to give information which may enable them to discover the perpetrator of a crime. It becomes the bounden duty of the police to locate the violator if possible. There is no justification for personal violence, inhuman or unfair conduct, in order to extort confessions. The officer who understands his position will offer admissions obtained from prisoners in no other manner than that which is sanctioned by the law. If a confession, preceded by customary caution, is secured through remorse or a desire to make reparation for a crime, it surely should not be regarded as unfair or improper.

"No well-informed and schooled police officer would knowingly make himself liable before a court for disreputable practices. On the other hand the well-directed officer in these times will endeavor to see to it that justice is done a prisoner. If demented, a drug fiend, a physical wreck, a first offender, if misled by others older in crime, he considers it proper that he should be informed in order that the court may be fully enlightened before passing judgment. Volunteer confessions and admissions made after a prisoner has been cautioned that wha he states may be used against him, are all there is to the so-called 'third degree.'

"Some years ago a rough usage was resorted to in some cities, in order to secure confessions, but such procedure does not maintain at large nowadays. There are those who come in contact with the authorities who are always ready to condemn on slight provocation—those who are waiting to 'even up' for some fancied wrong, or for some friction they may have had with the police through their own wrongdoing, and who are ever ready to condemn the police. Every year the forces, through the medium of the International Police Association, are improving intellectually and morally, and this in the face of many obstacles, and are endeavoring to raise their calling to a higher standard and in order to better unfortunate humanity." J. W. G.

NATIONAL INVESTIGATION OF "THIRD DEGREE" METHODS.—Moved by stories and reports concerning alleged maltreatment by the police in some of our large cities of prisoners charged with crime, the Senate of the United States has authorized the appointment of a select committee to "inquire into and report the facts as to the alleged practice of administering what is known as the 'third degree' ordeal by officers or employees of the United States for the purpose of extorting from those charged with crime statements and confessions; and also as to any other practices tending to prevent or impair the fair and impartial administration of the criminal law." The members of the committee are

Senators Brandagee of Connecticut, Borah of Idaho, Brown of Nebraska, Overman of North Carolina and Stone of Missouri. The committee is empowered to send for persons and papers, and it is announced that the investigation will be searching and thorough. Most police officials deny that such a practice exists, but as there is a widespread popular belief to the contrary, no harm and possibly some good may be derived from the investigation, if nothing more than the removal of the popular suspicion. J. W. G.

NEEDED REFORMS IN CRIMINAL PROCEDURE.—In a recent address on "Reform in Our Legal Procedure" Mr. Curtis H. Lindley, president of the Bar Association of San Francisco and of the California State Bar Association, laid down the proposition that "something is radically wrong with that departmen of judicial mechanism we call procedure." Speaking of the "machinery of the judicial treadmill" he asserts that "it has not yielded to evolutionary forces, has not kept pace with social development and has not as yet, with all its infirmities, invoked the effective wrath of public opinion. Its tendency has been toward inorganic crystallization. It has passed through the embalming process and declines to yield to vitalizing forces. Progress is barred by barricades of dead precedents." We have an intelligent, highly developed system of substantive law susceptible to adjustment from time to time to meet the expanding social necessity, he says, but it is practically administered by an archaic petrified system of adjective law framed on seventeenth century ideas. That incongruous, inadequate, and unjust results represent the output of the courts is not surprising. Mr. Lindley complains that many of the difficulties are due to an exaggerated respect for the individual as the "isolated center of the universe," which has come down to us with its seventeenth century coloring. The ninety-nine guilty men turned loose upon society unpunished do infinitely more damage to the social fabric than the possible conviction of one innocent man. There is too much admiration for our traditional system and too little respect for the needs of society. England in 1875 broke away from the old common law system and established the simplest and most efficacious workable plan of procedure which exists to-day in the civilized world. So far as matters of procedure are concerned many of the beneficent features of the English system are well adapted to American conditions and should be introduced into our jurisprudence.

Mr. Lindley suggests the following reforms in our law of criminal procedure: "First: Where a man is charged with crime, he should be interrogated by a magistrate. He may decline to answer if it so pleases him. But the state should be permitted to comment on the fact of such refusal on his trial before a jury of his peers. This sounds radical, and from an individualistic standpoint inhuman. But let us see what happens under the existing system. The poor devil who has committed a vulgar crime is placed in durance vile and sweated by the police until he either confesses or furnishes clews which enable the public prosecutor to obtain extrinsic evidence to secure conviction. The rich criminal of respectable antecedents and quasi social position gives bail, and when interviewed as to his ideas as to how the crime was committed and who committed it, he snaps his fingers in the face of justice and harks back to the seventeenth century. 'The law throws a halo of sanctity around my personality. I am in the hands of God and the Law. I am not called upon to explain.'

"In the meanwhile, the small voice of the man in the sweatbox undergoing the heroic treatment of the 'third degree' is drowned in the appeal to 'God and the Law.' Which of the two systems as practically administered gives the greatest shock to the ethical and moral sense? As between the two classes of individuals referred to there is certainly lacking the sentiment which has become the shibboleth of the century, 'Equality of Opportunity.'

Second: A verdict of three-fourths of the jury should be sufficient to convict, possibly in all cases, certainly in all where the infliction of the death penalty is not involved. This would give the defendant three-fourths of a show and the public one-fourth.

Third: Mere irregularities in the proceedings of trial courts and technical defects in indictments should not be a cause for the release of a criminal, but the courts should be permitted to amend the indictment, subject to the provision that before the beginning of the trial the accused be clearly advised of the nature and extent of the charge and be given an ample opportunity to prepare his defense.

Fourth: Appellate Courts should not be allowed to set aside the decisions of trial courts and grant new trials on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for errors of procedure, unless in the opinion of the court it shall appear from an examination of the entire cause the error complained of has resulted in a miscarriage of justice.

Fifth: The practice of giving written instructions to juries should be abolished and the court permitted on its own motion to give the law to the jury. A large percentage of reversals arise either from conflicting instructions, refusal to instruct, or for error in giving instruction asked by opposing counsel.

Speaking of the responsibility for much of our archaic procedure, Judge Lindley remarks that "The lawyers are beyond question responsible for some of the ills under which we are suffering. When suggestions are made towards organized effort to better conditions, their attitude is in the main one of intense conservatism. They have stood on many occasions in the way of needed reforms. While to a certain extent they are slaves to the system, they could do much more toward relieving the causes of complaint. The practicing lawyer is responsible, in some measure, for the delay which impedes the administration of justice. The standard of professional ethics is low. The spirit of commercialism has invaded the professional ranks, and the lawyer himself has justly earned some of the opprobrium which has been laid at the door of the profession. If we are to elevate these standards and are to make any serious headway towards those ideals which make for progress, and which typify and mark an advanced stage in the administration of justice, we must reform the lawyer, not by hanging him, but by making him realize his civic duty. He must abandon some of his preconceived notions, rid himself of the *laissez faire* moods which he affects, and be forced to realize that he has a duty to perform to his country, his state, his profession and himself, and that duty lies along the lines of moral and ethical progress."

In the search for remedies, says Mr. Lindley, the active and intelligent cooperation of the non-professional civic bodies is of the greatest importance. While, in the nature of things, the reform of legal procedure can only be accomplished through the well directed and concentrated effort of the bench and

bar, it is essential that the average citizen should have an opportunity to learn from popular discussion of the difficulties in order that he may not expect a maximum result within a minimum of time and that public sentiment be educated towards coöperation with the professional forces which must necessarily lead the way. J. W. G.

PROPOSED REGULATION OF EXPERT TESTIMONY IN KENTUCKY.—A bill to regulate the introduction of expert testimony in the courts of Kentucky was recently prepared by Hon. E. J. McDermott of Louisville, and submitted to the legislature of that state. The bill was prepared at the request of the State Bar Association and had the approval of the Louisville Bar Association, the president of the State Board of Health and of the State Medical Association. In brief the bill provided that whenever, in any civil or criminal case, expert testimony seemed probably necessary or desirable, the court might require the parties to file a statement showing briefly whether such evidence was to be offered and, if so, showing, in general terms, the nature thereof; and, thereupon, the court might appoint experts to look into the matter and to be prepared to testify, if called by either side or by the court; and if medical experts were needed, the court might choose from lists furnished by the State Board of Health or the State Medical Association. A reasonable fee for an expert so called should be fixed in each case by the court and be paid by the side calling him. Such expert might not demand or receive any other compensation. Any party to a suit might still call other experts of his own choice, but (to prevent the rich from having an unfair advantage) he might not call more than three experts without permission of the court; and, if the court should have appointed experts, the party intending to call other experts, who might be untrustworthy, professional witnesses, must (to prevent a surprise) file, in a reasonable time, a brief statement showing, in general terms, the nature and tenor of the evidence to be offered and the name and address of the expert to be introduced. Contingent fees, which might create a selfish bias, if not corruption, were forbidden; and an expert not appointed by the court might be required to state what fee had been paid or promised him; and he was forbidden to demand or receive, directly or indirectly, any other or higher compensation.

A supplementary bill, also prepared by Mr. McDermott and introduced into the legislature, provided that, if a criminal desired to rely upon insanity as a defense, he must plead it specifically when arraigned and must then be confined in some suitable, safe place where he might be observed and studied by experts appointed by the court for a reasonable time under suitable conditions. The bill also required the jury in such cases to state specifically in their verdict whether they find for the defendant on that plea or not. If acquitted on that plea, he should be confined in a suitable place for a year under the observation of experts to make it reasonably certain that he was at least quite sound and not again likely to be a menace to the community. A severe penalty was provided for any officer who negligently permitted a murderer to escape and for any person that aided him in his escape.

Both of these bills are in line with the best thought and practice on the subject of expert testimony and insanity procedure, and the principle of the first mentioned, in particular, has been endorsed by the medical and bar associations of a number of states as well as by the criminologists everywhere.

See, for example, the bill recommended by the New York State Bar Asso-

ciation last year, which made it the duty of the Supreme Court to designate at least ten and not more than sixty physicians in each judicial district from which parties or courts might select expert witnesses, the same to be paid such fees as the court might fix. American Bar Association Reports, 1909, p. 665.

The need of such legislation was well stated by Mr. McDermott in the *Kentucky Medical Journal* of September 1, last year. It is to be regretted that neither bill was acceptable to the legislature to which they were submitted.

J. W. G.

SAFEGUARDING THE CRIMINAL.—Under the above caption Samuel Scoville, Jr., a prominent member of the Philadelphia bar, contributed to a recent number of the *Saturday Evening Post* (March 26, 1910), an article reviewing some of the instances in which justice has been sacrificed by the slavish adherence of the courts to technicality. Some of the instances cited are the following: In West Virginia, a horse-thief sentenced to a term of two years in the penitentiary was granted a new trial because the indictment abbreviated the name of the state as W. Virginia, thus depriving the defendant of an important constitutional guarantee. In Missouri, a man who had committed a dastardly crime under peculiarly revolting circumstances and having been sentenced to the penitentiary was released by the Supreme Court because the copying clerk had omitted the word "the" from the indictment, thus "indicating that in Missouri the definite article 'the' is of more importance than a man's honor or a woman's chastity;" and the decision was made, too, in the face of a Missouri statute which declares that "no indictment shall be deemed invalid for any default or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits."

Moreover, the Supreme Court of Missouri had before it a decision in Wisconsin which summed up the effect of the words "against the peace and dignity of the state" as follows: "This formula is a mere rhetorical flourish adding nothing to the substance of the indictment, and it is difficult to see why the mandate for its use was inserted in the constitution . . . Of course, the accused cannot be possibly prejudiced or in any manner misled by the omission of the formula from an indictment." Yet, continues Mr. Scoville, the Supreme Court of Missouri wrote in its opinion: "It is not a satisfactory solution of the proposition to say that we know what was intended by the conclusion in the case at bar or that it was a mere matter of form."

Mr. Scoville contrasts the Missouri decision with one recently rendered by the Supreme Court of Oklahoma (Caples vs. State) and commented on in the last issue of this *Journal*, where the Supreme Court refused to reverse for the omission of the word "the" from the indictment. In overruling the objection the Oklahoma court said, "We know that there are respectable authorities holding to the contrary, but this court will not follow any precedents unless we know and approve the reason upon which they are based—it matters not how numerous they may be or how eminent the court by which they are promulgated. . . . Now that our criminal jurisprudence is in its formative period, we are determined to do all in our power to place it upon the broad and sure foundation of reason and justice, so that the innocent may find it to be a refuge of defense and protection, and that the guilty may be convicted and taught that it is an exceedingly serious and dangerous thing to violate the laws of this state."

SAMUEL SCOVILLE ON SAFEGUARDING THE CRIMINAL.

In South Carolina an indictment was dismissed because "father" was spelled "farther;" in Alabama another was dismissed because the letter "i" was omitted in spelling "malice;" in North Carolina the same short work was made of an indictment in which "breast" was spelled "brest;" and so on.

"In a noteworthy case decided by the Supreme Court of California in 1904 another line of protection for convicted criminals was developed," continues Mr. Scoville. "An information was filed against A in which it was stated that A did unlawfully and feloniously commit an assault upon the person of B by means likely to produce great bodily injury—to wit, with a heavy wooden stick. On an appeal to the Supreme Court the latter held that this information, although following the wording of the statute, was fatally defective because the means of injury were not described with sufficient precision. A layman might very well suppose that a heavy wooden stick could be understood as a means likely to produce great bodily injury; but the masterly reasoning of the Supreme Court of California disposes of any such fallacy, as follows:

" 'Describing a stick as "heavy" imparts no certain information; the term is relative; a stick which in the hands of a boy or a feeble person would be considered heavy, in the hands of a robust person would be deemed light. Again, it might be heavy and yet so large and unwieldy as to be useless in the hands of a powerful man toward the commission of an assault. It might, too, be heavy and yet so small or short that no danger of bodily harm could reasonably be apprehended from its use. Aside from the use of the term "heavy" there is no description in the information as to the definite weight, strength or size of the stick, or other qualities, properties or characteristics showing that it was a means likely to produce great bodily injury.'

"Under this decision," observes Mr. Scoville, "it is undoubtedly the duty of any citizen of California who expects to be assaulted with a stick to provide himself with a tape-measure and pocket scales, nor to forget, immediately after the assault, to obtain a complete set of the vital statistics of his assailant. Yet certain serious contingencies suggest themselves. What should be done if the individual wielding the stick nefariously made away with the same before any of its physical properties could be determined? Again, the court fails to explain the victim's duty in case the hardened owner of the stick refused to furnish any statistics as to his size, weight or strength. The argument itself has a familiar ring, and an examination of certain of the writings of that well-known legal authority, Mr. Lewis Carroll, will make it apparent where this Supreme Court learned its logic. The Duchess, in Alice in Wonderland, uses argument of the same brand where she says: 'Never imagine yourself not to be otherwise than what it might appear to others that what you were or might have been was not otherwise than what you had been would have appeared to them to be otherwise.' "

Mr. Scoville takes occasion to bestow high praise on the Chicago Municipal Court, whose record shows what can be accomplished by the courts in ridding society of criminals when "common-sense is applied to common-law." This is a court, he points out, that was organized by business men, conducted on business principles and whose procedure is unincumbered with technicality and antiquated tom-foolery. Justices of the peace and grand juries with the other dodos of our procedure, he observes, are extinct in Chicago and there criminal justice is swifter than in any other city in the world. In conclusion Mr. Scoville remarks:

JOHN D. LINDSAY ON THE RIGHT OF APPEAL.

"If now this rule, which has done so much for Chicago, namely, that crime shall no longer be safeguarded by unmeaning technicalities, can be established in our Federal courts, a long step will be taken forward. These courts will act as models in each state for the state courts. If there be in every state a Federal jurisdiction where rights are guarded by swift justice, public opinion will soon bring about similar conditions in the state courts. Every citizen who feels that it is more important to safeguard himself and his wife and children, rather than the criminal within his gates, to protect right rather than wrong, should send a letter to his Representative in Congress, urging the passage by the House of Representatives of Bill 14,552, to regulate the judicial procedure of the courts of the United States, now before the Committee on the Judiciary.[3] Our attitude too long has been that of Burke when he declaimed:

"'Perish the sacrilegious hand that shall remove even the rust from the great structure of the common law.' Citizens should arouse legislatures to the realization that the machinery of the law is no place for rust." J. W. G.

EQUAL JUSTICE FOR THE RICH AND POOR.—In a paper entitled "The Necessity for a Court of Criminal Appeal," read before the New York State Bar Association in January of the present year, Mr. John D. Lindsay of the New York City bar points out the reasons for allowing an appeal in criminal cases and cites a number of instances coming under his own observation where the right of appeal saved innocent persons from punishment. At the same time, he dwells upon the expense of taking appeals and shows that the right is practically prohibitive to the poor man. In reviewing some important cases where men were unjustly convicted of felonies and had their convictions set aside on appeal, he pertinently inquires, "but what would have occurred if any of these men had happened to be a penniless beggar whose doom was sealed when the jury returned its verdict?" "Think of the irony of a statutory enactment," he says, "which confers a right of which only the man of substantial means may avail himself. Such a system denies to the poor man the appeal which the law says he may take as a matter of right. The murderer, however brutal his crime, may stay the execution of the just sentence of the law by serving a notice of appeal, and counsel to whom compensation is allowed are assigned to argue his case, but the man adjudged guilty of any lesser crime, even though a higher court might deem his acts wholly innocent, can have no review for lack of necessary funds to prepare and present his case."

"A man who is able to command the resources necessary to present his case to a court of review has at least a chance to obtain a reversal, while the pauper has none. Justice is not administered when the rich, who can employ astute lawyers, are enabled to take advantage of technicalities, while the poor are unable by reason of the great expense to carry their causes to the higher courts." Mr. Lindsay says he would be the last man to suggest the abolition of appeals in criminal cases, yet it is a matter of grave doubt, he remarks, whether the impression made upon the ordinary mind by the inequality of the existing system is not more likely to increase the ever growing popular distrust in the administration of criminal justice than any other cause. To remedy this inequality and put the poor defendant on an equal footing with the rich one, Mr. Lindsay would have

[3] This bill was commented on editorially in the last issue of this JOURNAL. —J. W. G.

the state pay the expense of the defendant's appeal in murder cases, including compensation for his counsel, and it should do as much for the impecunious defendant convicted of a lesser crime, provided that his case presents legal questions deserving consideration in a court of review. In such cases, counsel should be assigned, upon a certificate of the presiding judge or of a respectable member of the bar, to take and prosecute an appeal, which should be heard upon the original or copies of the record and stenographic minutes in the court below. Counsel should also be reimbursed for any necessary expense incurred and awarded reasonable compensation for their services. J. W. G.

MAYOR GAYNOR'S POLICE REFORMS IN NEW YORK.—Mayor Gaynor has recently inaugurated a number of reforms in the police administration of New York City. By an order of March 22 he directed that hereafter no person should be measured or photographed unless he has been tried or convicted or has pleaded guilty to the commission of a crime. The order was called out by the wrongful arrest of a man who, after his arrest, was refused permission to communicate with his friends and was subsequently stripped and photographed as though he were a common felon. Such a procedure, said the mayor in a letter to the police commissioner, is an outrage and is unworthy of a civilized community. The measuring and photographing of the prisoner, he added, was in fact an unlawful battery upon him.

"I am aware," said the mayor, "that my distinguished predecessor decided in the Duffy case that the police were not to follow the said decision, but I cannot follow his decisions as a precedent. I have the names of a large number of other innocent persons who have been wronged in this same way. It was my intention to have them righted in the very first days of my term of office, but many things have delayed my taking action on them. I shall now send you the list for your prompt action. Let the police remember, of all things, that they themselves must keep within the law regulating and limiting their powers and conduct. The way to efficiently enforce the criminal law is the way prescribed by the law itself. Whatever the law says or any court decides, the police must obey."

At about the same time he took occasion to give some sound advice to a newly appointed police magistrate. After urging him never to allow himself to be moved by political influence in the discharge of his duties, the mayor went on to say: "Let the case of no one, however humble or unfortunate, go by you without careful attention. Be not elated with your powers, which are very great and apt to turn one's head, but be humble and patient. Do not convict anyone unheard. Since I have been mayor my attention has been called to cases of offhand and ostentatious convictions of humble persons by magistrates which were gross wrongs. I sent a secretary to copy the record in two of the cases, and found that no evidence whatever was taken. See to it, on the other hand, that arrested persons are not discharged when they should be held. It is very discouraging to the police to have magistrates discharge prisoners against whom ample evidence of crime is presented. And the same is true in the case of minor offenses.

"If an officer sees a woman in the street ogling after men, and speaking to them, and arrests her as a disorderly person, it is deplorable to see a magistrate discharge her on the ground that, as the policeman did not hear what she said to the man, there was no evidence that she solicited. Her actions are evidence

of it sufficient to put her to her explanation or defense. Words are not necessary.

"In the same way, it seems to be a common thing to discharge a liquor dealer against whom the evidence is that a person ordered whiskey of him, and that in response he furnished something as whiskey. It is said that this furnishes no evidence that the drink was whiskey, which entirely overlooks that the production of it as whiskey by the defendant is an admission by him that it was whiskey. It is not necessary to have a whiskey expert testify that it is whiskey.

"I could multiply similar fooleries, but these suffice for illustration. In the administration of the criminal law the natural conclusion from a given state of facts is just as permissible as in any of the affairs of men. When magistrates lose sight of this, or are too narrow-minded to comprehend it, they turn their office into ridicule and distrust. Be a broad, good man, and you will be a great magistrate, and I shall always be glad that I appointed you. I write this for more than you, for I believe it is high time that the appointing power take note of the conduct of some of our magistrates."

Still more recently, the mayor has taken action looking toward the abolition of extortion and blackmailing in connection with the liquor problem, a practice which, he says, has become a greater menace to good government than the violation of the excise law. He estimates that the price paid by the 10,000 liquor dealers of New York to the police for protection when violating the laws has been in the neighborhood of $2,000,000 annually. It is announced that the mayor has entered into an agreement with the liquor dealers' association by which, in consideration of fair treatment, they have promised to cease buying illegal protection. In a letter to the police commissioner, the mayor directs that hereafter no policeman be allowed to enter a saloon, but that they must obtain evidence of violation of the law by watching the saloons from the outside, which evidence must be turned over to the district attorney, who will make the arrests. The former practice of sending out detectives to buy drinks, with a view to obtaining evidence, has been responsible, says the mayor, for most of the grafting and was an open invitation to blackmail. In thus overturning old traditions in the police department, the mayor has aroused strong criticism as well as wide praise. J. W. G.

CRIMINAL LAW REFORM IN KANSAS.—The State Bar Association of Kansas, at its annual meeting last year, appointed a special committee on crimes and criminal procedure, with William E. Higgins of Lawrence as chairman. Among the addresses delivered before the association was one entitled "The State and the Criminal in Kansas," by Mr. Higgins. Referring to the already widespread and rapidly increasing popular dissatisfaction with the results of the existing system of administering criminal justice, Mr. Higgins declares that the time is coming, if it has not already come, when the common objections to our system of procedure, on account of the delays and technicalities which encumber it, will give way to an attack upon the very system itself. The real causes for this popular discontent should be removed, for it is not desirable to have any system for which the people have no proper respect and which is unsuited to the needs and conditions of the times. Mr. Higgins thinks much of the criticism is due to misapprehension and ignorance, though he admits that there are many opportunities for reform. Some of the delays and techni-

calities complained of are essential to protect the innocent from conviction; but others are without excuse. The opportunities for dilatory motions and applications might be reduced by repealing some of the technical requirements of the law of procedure, by requiring a better guarantee of the merits of the motion or plea, or by stating the information in simple and concise language instead of following the precedent out of a form book. In conclusion, Mr. Higgins states it to be the duty of the legal profession to do three things: To defend the law against unfounded newspaper and street attacks; to examine the law critically to see if the times and conditions have so changed that the strict application of some of the procedural steps may not be relaxed, at least under certain conditions; and to resent any attacks upon the profession as one devoted to the perpetuation of delays and technicalities for selfish purposes. J. W. G.

PUNISHMENT AS A DETERRENT; CRITICISM OF THE PAROLE SYSTEM.—Charles C. Nott, Jr., assistant district attorney of New York City, in a paper read at the recent annual meeting of the Association of District Attorneys of the State of New York took occasion to express his dissent from the view now prevailing in some quarters that the object of punishment is primarily the reformation of the offender, rather than a means of deterring others from committing crimes. The remarkable increase of crime in this country, Mr. Nott asserts, is due principally to the practical abandonment of the principle of punishment as a deterrent and an over-indulgence to the offender, as though his reformation were the chief consideration. The administration of our prisons, the manner and methods of dealing with persons about to be sentenced, the sentences that may be imposed, all show this tendency. In our prisons, he says, the stripes have been abandoned for first offenders; prisoners' heads are no longer shaved; and the lock-step has been abandoned.

"Prisoners serving indeterminate sentences are uniformly discharged on the completion of their minimum sentence, regardless of the nature or heinousness of their crime, if only their individual conduct in prison has been satisfactory. The minimum amount of an indeterminate sentence has been recently reduced to half of the maximum, which, in effect, simply cuts in two the punishment that theretofore might have been meted out to a first offender. Second offenders may be paroled before the expiration of their sentence. And above all and more important than all of this, the tendency toward suspensions of sentence has in the county of New York so developed as to become a menace to the community."

The main object of punishment, says Mr. Nott, should be to safeguard the community, by deterring others from committing crime, while the reformation of the criminal should be a mere incident. The administration of the criminal law cannot in fact be successfully employed as a purely reformatory system. The number of persons actually improved by confinement in prison is, he asserts, exceedingly small, and always will be. Nothing else can be expected where large numbers of convicts are thrown together in close association with each other. Mr. Nott remarks that eight years ago, when he entered the district attorney's office in New York City, the term "suspended sentence" had little meaning to the members of the bar and was almost unknown to the public. Now it is as well known a feature of criminal administration as a plea of guilty or a verdict of acquittal.

The number of suspended sentences in the Court of General Sessions of New York City increased from 460 in 1904 to 1,160 in 1908, the increase being out of all proportion to that of the total number of indictments found. Since August, 1909, when the number of suspended sentences given by each judge of the Court of General Sessions (the number ranged from 18 to 204 for each judge) was for the first time made public and thrown open to criticism, there has been a marked decrease. Assuming that the average maximum term for which the defendants could have been sentenced was six years, at the end of 1909 there would have been 4,361 convicted criminals still on parole in the county of New York.

"When we realize," says Mr. Nott, "that this assembly of convicts is paroled in the custody of five probation officers (several of whom are women, and none of whom are scientific criminologists or people of any extraordinary force or personality to govern such a body), it is not surprising if crime is said to be on the increase in New York county. Nor is it astonishing that when each probation officer has under his or her supposed surveillance such a large number of criminals the probation system as now administered becomes a mere farce. If the number of suspensions for the last two years is continued it means that annually a full regiment of convicted criminals is to be let loose upon the community under a farcical supervision, and that the number in charge of each parole officer is to materially increase over the already absurd figures." The mere statement of these figures, he concludes, is enough to throw serious doubt upon the parole system, even if it could be effectively administered, which it certainly cannot be. Mr. Nott then proceeds to give a number of instances coming under his observation as illustrations of his charge that the probation system as actually administered in New York is a "good deal of a farce." The evil effects of the system, both upon the community and upon the judges, he maintains, are numerous and serious. It works an injury upon the community by encouraging crime and by losing to the public thousands of dollars by what he calls "the depredations of probationers" and of those encouraged to crime by the probationers' immunity, to say nothing of the losses inflicted by crimes of violence. The evil effect upon the judges is such that it subjects them to continual pressure, political or otherwise, in the interest of convicted offenders. On sentence days the chambers of the judges are crowded with a various assortment of people desirous of using every means known to them to influence the judge. No system is better calculated to introduce political influence in the administration of the criminal law, we are told, than this. J. W. G.

PROPOSED REFORM OF CIVIL AND CRIMINAL PROCEDURE IN CALIFORNIA.—A committee of the San Francisco Bar Association appointed to consider and recommend needed changes in the civil and criminal procedure of the state has made a report recommending the following reforms: First, the enactment of a law allowing the district attorney to amend an indictment, without leave of the court, at any time before the defendant pleads, provided that the offense is not thereby changed; and any time thereafter, if in the judgment of the court it can be done without prejudice to the substantial rights of the defendant. Already the states of New York, Wisconsin, Montana, Texas, Louisiana and others have enacted such statutes and they have been the means of preventing the escape of many criminals on technicalities. The ends of justice require

that where an indictment is found to be defective on account of a clerical or similar error, it should not be thrown out for that reason, but the prosecuting attorney should be allowed, under certain conditions, to correct it so that the trial may proceed.

Secondly, the committee recommends the enactment of a statute providing for the impaneling of grand juries by the court, which must be satisfied that every person accepted is duly qualified to serve as such juror. This proposal is taken from an Oregon statute. The object of the proposed change, in the opinion of the committee, is to do away with long investigations at the instance of indicted persons regarding the qualifications of grand jurors—a proceeding which results in no advantage to the defendant, is expensive to the state and brings the administration of the criminal law into disrepute.

In the third place, it recommends the abolition of the provision in the penal code making it necessary to furnish the defendant with a copy of the testimony taken before the grand jury. Speaking of the existing practice in this respect, the committee concludes:

"We believe that the requirement that all the testimony taken before grand juries shall be taken down by a stenographer and transcribed and filed with the clerk and that a copy thereof be served upon the defendant, adds unnecessarily to the expense of grand juries, encumbers their deliberations, robs their proceedings of secrecy and gives accused persons (and other persons who are likely to be accused) the opportunity of thwarting justice. This latter consideration we deem to be an important one, for, while in theory it is only fair to an accused person to know what the witnesses against him have testified to, we know that under our system there is only the remotest possibility that an innocent person will be convicted, and we believe that such information is commonly used by the guilty to build up defenses and get rid of witnesses."

J. W. G.

PROPOSED RESTORATION OF THE DEATH PENALTY—CRIMINAL LAW REFORM IN RHODE ISLAND.—The Legislature of Rhode Island has passed a resolution for the appointment of a joint committee to revise, simplify and improve the laws of the state relative to crimes and punishment and criminal procedure. The committee is directed to report in print to the general assembly not later than February 1, 1911, such recommendations and changes in the existing laws as it may deem necessary or advisable and is authorized to give hearings and perform such other acts as it may deem necessary for a full consideration of the subject. The appointment of this committee was the outcome of a spirited controversy over a bill to restore capital punishment in the state. At a hearing on the proposed bill on the fourth of March, a number of prominent citizens from different parts of the state appeared for and against the measure. Among those who advocated the restoration of the death penalty was former Governor Higgins and Judge Tuck. Mr. Higgins declared that the time has come "when mawkish sentiment in Rhode Island should take a back seat." "There is," he added, "too much sickly sentimentality over these murderers. Conditions have changed in Rhode Island since the death penalty was repealed. The population is of an altogether different character than it was then, and many of our citizens come from places where there is little respect for law. We must deal with these people with adequate laws. As a citizen of my state, I want to protest against making it a rendezvous for murderers, highwaymen and criminals."

PROPOSED RESTORATION OF DEATH PENALTY IN RHODE ISLAND.

A delegation of citizens from Pawtucket, where an atrocious murder had recently been committed, led the fight in favor of restoration. The state, it was declared, has become the dumping ground for thugs and desperadoes, the number of homicides in proportion to the population being already from two to six times as great as in other states where the death penalty prevails.

Representative Bullock, the author of the bill, after dwelling upon the increase of crime in the state, inquired, "Is it not high time to revamp and repaint the old sign and hang it at the parting of the ways, that he who lurks about our places of business or our homes with evil intent in his heart may read this penalty, that he who takes the life of his fellow-man shall pay for it with his own life. Is it not time, under the conditions which exist in this state, that something be done to make safer the people living in this commonwealth?"

Judge Tuck remarked that the trouble with life imprisonment is that the certainty of enforcement is lacking. Since the abolition of the death penalty in the state, more than half of those convicted of murder have been pardoned.

Among those who appeared in opposition to the bill were ex-Governor Garvin and former Chief Justice Stiness. Mr. Garvin maintained that certainty of punishment was of more importance than the severity of the penalty, and in states where the death penalty prevails juries often refuse to convict. Judge Stiness, in opposing the bill, said:

"I am proud of Rhode Island because of the law it now has that a man cannot be executed for crime. Men have been found guilty who were not, and it would require an omniscient jury to make absolutely sure that this did not happen again. I will admit that such cases are not numerous, but we ought to hesitate before we go back to a law that takes a life. It is not reasonable, it is not righteous, it is not intelligent for a state to pass an act whereby an innocent man might be executed. We have no right to take one life for another, I believe. It would be a great mistake for Rhode Island to go back to capital punishment."

In support of his argument, the former chief justice cited a local case, where a soldier, who was a professional deserter from the Army at a time when the offense carried a penalty of hanging, was sentenced to serve life imprisonment for the shooting of another soldier on the training grounds. It was afterwards found that the man did not commit the deed, he said, but he had not attempted to prove his mistaken identity because a worse punishment awaited him if the Army authorities located him.

It may be remarked that in Iowa and Colorado, where the death penalty was abolished, it has recently been restored. J. W. G.

JUDICIAL EFFICIENCY IN CHICAGO AND ENGLAND COMPARED.—A comparative study of the organization and efficiency of the judicial establishments of Cook County (Chicago) and England is the subject of three articles recently contributed to the *Illinois Law Review*. The first article, contributed by Professor Albert M. Kales and published in the December number, undertakes to show that the administration of justice by the courts of England is on the whole far superior to anything we have in this country. The English High Court, composed of twenty judges, in the year 1905 actually disposed of eighty thousand civil cases and fifty-six hundred contested cases, exclusive of criminal cases, says Mr. Kales. Taking these fifty-six hundred contested cases only, we find that the average number of cases disposed of by each judge per year was two hun-

dred and thirty-three, or about one each court day for each judge. When it is remembered that the county courts of England have jurisdiction up to fifteen hundred pounds and that the fifty-six hundred cases tried were the sifting of important contested cases from a total of eighty thousand disposed of and that they were the most important tried in a great nation like England, the average of one each court day by each judge is a remarkable record indeed—without doubt one that could not be equaled anywhere in this country. All the civil litigation of England and Wales, including appeals, Mr. Kales continues, is taken care of by fifty-eight county judges with jurisdiction up to fifteen hundred pounds, and thirty-four judges of the Supreme Court of Judicature—ninety-two judges in all; while Cook County alone requires fifty-six judges to attend to the judicial business of the county. The superior efficiency of the English courts, in the opinion of Mr. Kales, is due to the method of appointing the judges and their life tenure—a system which insures the best judicial talent in the country and complete independence of the judge in the discharge of his duties; to the superior organization of the judicial system, by which the judges are relieved of clerical and routine work through the assistance of masters; and to the peculiar organization of the bar, by which the members of the legal profession are divided into groups, each being devoted to a limited and special field, within which he becomes a master. The barrister who appears in court is not simply a client caretaker, but he is trained in the work of handling cases and it is to his interest to have litigation in which he is concerned expedited as rapidly as possible. A final reason which Mr. Kales gives for the ability of the English judges to dispose of their cases with such dispatch is the existence in England of a modern and rational system of practice and procedure, much of which is not the work of legislative bodies, but of the courts themselves.

The discussion of the comparative efficiency of the Cook County and English courts is continued in the January number of the same periodical, by Stephen A. Foster, one of the judges of the Chicago Municipal Court. In the main, Judge Foster agrees with Professor Kales in regard to the superior efficiency of the English courts, though he points out that many of the best features of English judicial organization and procedure have already been embodied in the organization of the Municipal Court of Chicago, to which Mr. Kales' criticism will not therefore apply. A strong dissent from the views of Professor Kales and Judge Foster is made by Judge Gemmill of the Chicago Municipal Court in the March number of the *Review*. England, in fact, he says, has not made the progress that we have in the administration of the criminal law. Her statute books contain laws of mediæval origin and she inflicts penalties we have considered inhuman for seventy-five years. From a reading of more than three hundred cases decided by the Court of Criminal Appeal, Judge Gemmill is led to the conclusion that the English procedure is superior in few, if any, respects to ours. The same particularity in regard to indictments is required there as here, and he cites cases in illustration. Speaking of the freedom of the English judges in the conduct of trials, Judge Gemmill says that in a large number of the 339 cases presented to the new Court of Criminal Appeal the accused had been denied right of counsel. It frequently happened that he was called for trial, the jury summoned and accepted without question, slight evidence was heard and he was pronounced guilty by the jury without leaving the box. It

sometimes happens, we are told, that a prisoner is arrested on two or more charges, placed on trial before a court and jury on one charge and acquitted and then immediately called before the same court and jury upon another charge and convicted. Such a system, Judge Gemmill declares, instead of being commendable, deserves the strongest condemnation. J. W. G.

THE ADMINISTRATION OF JUSTICE IN THE UNITED STATES.—The Administration of Justice in the United States was the general subject of discussion at the fourteenth annual meeting of the American Academy of Political and Social Science, held at Philadelphia on April 8 and 9, 1910. Some of the topics discussed at the five sessions were of much interest to students of criminal law. The papers of the first session were grouped under the general subject of "The Treatment of the Accused and the Offender." Justice John P. Elkin of the Supreme Court of Pennsylvania presided at this session. In his introductory remarks, Justice Elkin referred to the apparent present tendency to disregard what is and has been and launch out upon doubtful experiments. He emphasized the fact that it is always expedient to inquire what is the result of past experience, that law is the great conservative force in government and rules of law should not be unnecessarily unsettled. There is just as much danger in having too many laws as in having too few. In connection with the widespread complaint about "the law's delay," Justice Elkin stated that the average length of time from the argument of an appeal in the Pennsylvania Supreme Court to the filing of the opinion is sixty days, which he thought was as speedy as consistent with an adequate consideration of the questions presented. Of two hundred and twelve cases on the docket of this court at its October term, all but five had been disposed of at the January term.

Mr. Homer Folks of New York spoke on "The Treatment of the Offender." Mr. Folks regards our whole present system, in spite of recent improvements, as a failure, due mainly to (1) the persistence of wrong notions as to the purpose of punishment; (2) the failure to provide adequate machinery for making the suspended and indeterminate sentence really effective; (3) the failure to collect adequate information as to the operation of correctional measures, and (4) the traditional non-critical attitude toward the courts encouraged by lawyers and some others. Mr. Folks argued that punishment has little deterrent effect upon others, that while the indeterminate sentence has come to stay, it is at present unsatisfactory and will be unless there is after-supervision of those released on parole. In fact, we really do not know how this and other corrective means work, because care has not been taken to collect this information. Mr. Folks laid stress on the attitude of respecting and revering but not criticizing the courts, which, he said, tends to maintain superstition and corruption in the courts. Justice Elkin suggested that criticism of the courts was not entirely unknown and that their proceedings were always public.

Miss Maude E. Miner of the New York Probation Association and Miss Katherine B. Davis, superintendent of the Bedford (N. Y.) Reformatory for Women, spoke on the same general subject. Miss Miner felt sure that she had not helped more than one-third of the probationers coming under her care, and Miss Davis was but little more optimistic in regard to the work of the reformatory. Both thought that restraint and education should be continued for long periods, years if necessary, in order to be effective.

F. H. Nibecker, superintendent of the Glen Mills School, a boys' reforma-

tory at Glen Mills, Pa., closed the discussion of this subject. Mr. Nibecker emphasized as a fundamental principle that the punishment of the wrongdoer is for the protection of the community. He held that penal measures must be regarded primarily from the standpoint of their effect upon the community, rather than the criminal, and that the reformation of the particular criminal, desirable as that is, must not be attained at the sacrifice of the deterrent effect of punishment upon others.

One session was devoted to the subject of the Juvenile Court and another to "The Scope and Limits of the Injunction."

The governor of Pennsylvania, Hon. Edwin S. Stuart, presided at the session on the Administration of the Criminal Law. Samuel Untermyer, Esq., of New York presented a paper on "Abuses and Remedies in the Administration of the Criminal Law." Mr. Untermyer was of the opinion that the present remedies against crimes of violence are fairly satisfactory, but that there has been shown a lack of ability to deal with financial crimes, due chiefly to the difficulty, under existing constitutional provisions, of compelling the production of books and papers and the impossibility of forcing defendants to testify. The growth of perjury in this country is an evil attributable to the undue severity of the punishment. But the most prolific source of injustice, the speaker held, is the unbridled license of the press in commenting on pending cases. It creates sentiment which makes a fair trial almost impossible and entails much time and expense in securing impartial juries. The remedy is to prohibit the publication of anything about a case in court except a verbatim report of the proceedings. The law's delay may be considered as an evil, but not so serious an evil, Mr. Untermyer thought, as contended by some. Some of the remedies suggested, he thought, were worse than the disease. For instance, the right of appeal should be enlarged rather than restricted. Nothing that the law regards as error should be regarded as too technical to form the basis of review.

John Brooks Leavitt, Esq., spoke on the subject, "To What Extent Should the Insane Be Made Amenable to the Criminal Law?"

Hon. Julius M. Mayer, former justice of the Court of Special Sessions of New York City, discussed the "Administration of the Criminal Law in the Inferior Courts." He called attention to the fact that while the magistrates' courts come into contact with far more of the people than the higher courts, they have usually received little attention and generally lack proper facilities for their work, proper court rooms and often proper officers. Among the pertinent suggestions made was that a summons instead of a warrant issue in most quasi-criminal cases in the first instance, too many people being arrested for trivial things, such as the careless breach of a municipal ordinance.

A paper on the Jury System was read by Arthur C. Train, Esq., ex-assistant district attorney of New York. Mr. Train, speaking from his experience in the trial of several thousand criminal cases, said that the chief defects of the jury system are those that are inherent in human nature; but that our liberties would not be safe without jury trial. He characterized as erroneous the idea that in our larger cities fair and intelligent juries are not the rule. The average New York jury, he thought, finds a correct verdict four times out of five. Altogether, the jury system is the best that has been devised for the trial of issues of fact.

The last paper of this session, by Everett P. Wheeler of New York, dealt with "Necessary Reforms in the Treatment of Criminal Causes."

ASEXUALIZATION OF HEREDITARY CRIMINALS.

Vice-President Sherman presided at the last session, at which "The Respect for Law in the United States" was discussed. Varying views were expressed by different speakers, but perhaps the most important suggestion was that made by Prof. Kirchwey of Columbia University, that lack of respect for law, where it exists, is due to the failure of courts and legislators to make it an adequate expression of the people's needs.

Altogether, the sessions were of exceptional interest and suggestiveness and the various and opposing views presented of the different topics furnished much material for thought and discussion. Many of the papers were contributions of permanent value to the subjects of which they treat and the publication of the special volume which is to be issued by the academy, embodying the proceedings of this meeting, will be received with interest. E. L.

ASEXUALIZATION OF HEREDITARY CRIMINALS.—In a paper entitled "Hereditary Criminals, the One Sure Cure," delivered before the Tri-State Medical Society at its meeting in Richmond, Va., February 15-17 of this year, Dr. Charles V. Carrington, surgeon to the Virginia Penitentiary, makes a strong plea for the asexualization of hereditary criminals and of certain defectives and degenerates. Dr. Carrington dwells upon the great increase of crime and insanity and cites statistics from the records of his own state to show that the number has gone up by leaps and bounds. The larger number of criminals, he maintains, are such by heredity and the number cannot be reduced effectively by punishment, education or reformatory measures. There are families in Virginia, he says, who have been constantly represented on the penitentiary rolls from grandfather to son and now to grandson, and the only effective way of stopping the increase is to prevent, by sterilization, their continued reproduction. If this were done, crime and degeneracy in fifty years would, he boldly asserts, be decreased by at least fifty per cent. Laws of this character, it will be remembered, have recently been enacted in California, Connecticut, Utah and Indiana, and Dr. H. C. Sharp of the latter state is quoted as having demonstrated the usefulness of the system by nearly five hundred operations within the last two years. Again, Dr. Carrington quotes Dr. Barr, in his work on "Mental Defectives," as saying: "Let asexualization be once legalized, not as a penalty for crime, but a remedial measure preventing crime and tending to future comfort and happiness of the defective; let the practice once become common for young children immediately upon being adjudged defective by competent authority, properly appointed, and the public mind will accept it as an effective means of race preservation. It would come to be regarded just as quarantine or vaccination: simple protection against ill."

Describing his own experiences, Dr. Carrington says: "In my experience as surgeon to the Virginia Penitentiary, I have sterilized, by vasectomy, twelve cases; in every instance but two, the subjects were insane, persistent masturbators, and in every case masturbation has ceased, patients have invariably improved mentally and physically, and in two notable cases, one sterilized in 1902, and the other in 1908, both of these cases being exceedingly dangerous homicidal devils, the improvement and cure was little short of marvelous. These two cases were reported at length in a paper read before the National Prison Association at its meeting in Richmond in 1908. Of the two cases referred to above as not having been insane masturbators, but sterilized, one was an epileptic masturbator.

In his case, masturbation has been stopped and his epileptic spells are much less frequent. He was operated on during September, 1909. The other case very aptly illustrates the class habitually criminal, especially singled out for sterilization by the bill. This young negro, judging from his color, is the son of a negress by some degenerate white man. When he was very young he was sent to the negro reformatory for incorrigible boys. The superintendent of this reformatory, a most intelligent and well-informed man, ex-minister from the United States to Liberia, informed me that this boy had a most harmful and debasing effect on the other inmates of the reformatory; he was a past master in sodomy and masturbating. After he became too old to remain at the reformatory he was discharged and very soon came to the penitentiary for burglary. He at once took the lead in sodomy and kindred deviltries, repeatedly being caught in the act of sodomy, and no punishment, however severe, had the least deterrent effect. He completed his sentence, was discharged, and in less than a year was resentenced for burglary again and given the additional five years for second conviction."

"When he returned to serve this new sentence he was even more debased and debasing in his masturbating and sodomy and I sterilized him by vasectomy about six years ago; he is today a strong, well-developed young negro, well behaved, and not a masturbator or sodomist. Cured by sterilization, and, better than anything else, when he is discharged at the completion of his sentence, he cannot reproduce his species." The operation, if performed by vasectomy, the doctor says, is simple and easy, does not endanger the life of the patient and does not arrest sexual development. When cured of masturbation, insanity or criminal tendencies, the power of procreation can be effectively restored."

Regarding such legislation as that which Dr. Carrington advocates and which, as already stated, has been enacted in a few states, medical authorities and criminologists, however, differ. The president of the American Bar Association, for example, in his address at the last meeting of the association, denounced it as offensive because of its barbarism, and as objectionable because of the want of safeguards for the victim, there being no provision for a hearing and no notice required to his relatives and friends.[1] J. W. G.

PRINCIPLES OF PROCEDURAL REFORM.—Professor Roscoe Pound, whose paper before the American Bar Association several years ago on "Causes of the Popular Dissatisfaction with the Administration of Justice,"[2] has done so much to call attention to the defects of existing methods of procedure, has recently contributed two articles to the *Illinois Law Review* (January and February, 1910), in which he dwells upon the over-technical character and exaggerated importance which the legal profession in America attaches to formalism in procedure.

Mr. Pound shows that in Illinois thirty-five per cent of the opinions of the appellate courts turn upon points of practice, and statistics, he says, show that this proportion holds good throughout the country generally. This constitutes a heavy burden upon the courts and a severe strain upon the substantive law. If this proportion could be reduced to more reasonable limits it would lighten the load of many an overworked court, leave the lawyers a larger opportunity to devote themselves to the study of the points of substantive law involved in their cases, and the law would gain in certainty and precision of application. Moreover, a

[1] Reports of the American Bar Association, 1909, p. 363.

[2] American Bar Association Reports, 1906, pt. I, 395 ff.

system in which so large a proportion of cases is tried and decided wholly or largely upon mere points of procedure has a strong tendency to lessen respect for it and to impair confidence in the courts.

Among the causes for the technical-ridden character of our procedure and the exaggerated importance which is attached to matters of practice, Professor Pound enumerates the following: First, the survival of conceptions and rules originating in the archaic administration of justice by the mechanical following of form; second, the characteristic features of our legal procedure became fixed and in its chief details were fully developed in the seventeenth and eighteenth centuries—a period marked by excessive formalism and over-refinement in every department of activity; third, the impotency of the American judge and the tendency to tie his hands by hard and fast procedural rules; and finally, the character of the legal profession itself.

Addressing himself to the problem of how to improve our system of procedure so as to increase its efficiency and diminish the burdens which it now imposes upon the bench and bar, as well as upon the litigant, Professor Pound proposes the following rules of procedural reform:

"I. It should be for the court, in its discretion, not the parties, to vindicate rules of procedure intended solely to provide for the orderly dispatch of business, saving of public time and maintenance of the dignity of tribunals; and such discretion should be reviewable only for abuse.

"II. Except as they exist for the saving of public time and maintenance of the dignity of tribunals, so that the parties should not be able to insist as of right upon enforcement of them, rules of procedure should exist only to secure to all parties a fair opportunity to meet the case against them and a full opportunity to present their own case; and nothing should depend on or be obtainable through them except the securing of such opportunity.

"III. A practice act should deal only with the general features of procedure and prescribe the general lines to be followed, leaving details to be fixed by rules of the court, which the courts may change from time to time, as actual experience of their application and operation dictates.

"IV. The function of a judicial record should be to preserve a permanent memorial of what has been done in a cause; the court should be able at all stages to try the case, not the record, and, except as a record of what has been done may be necessary to protect substantive rights of parties as the suit progresses, the sole concern of the court with respect to the record should be to see to it that at the termination of the litigation it records the judgment rendered and the causes of action and defenses adjudicated.

"V. The office of pleadings should be to give notice to the respective parties of the claims, defenses and cross demands asserted by their adversaries; wherever that office may be performed sufficiently without pleadings, pleadings should be unecessary, and where pleadings are required, the pleader should not be held to state all the legal elements of claim, defense or cross demand, but merely to apprise his adversary fully of what such claim, defense or cross demand is to be.

"VI. No cause, proceeding or appeal should be dismissed, rejected or thrown out solely because brought in or taken to the wrong court or wrong venue, but if there is one where it may be brought or prosecuted, it should be transferred thereto and go on there, all prior proceedings being saved.

"VII. The equitable principle of complete disposition of the entire controversy between the parties should be extended to its full content and applied to every type of proceeding. To give effect to this principle five propositions are suggested.

"VIII. So far as possible, all questions of fact should be disposed of finally upon one trial." This principle is also elaborated in a series of special propositions."

"IX. No judgment should be set aside or new trials granted for error as to any matter not involving the substantive law or the facts, that is for error as to any matter of procedure, unless it shall appear to the court that the error complained of has resulted in a miscarriage of justice.

"X. The trial judge should be permitted to charge the jury, orally, to sum up fairly and accurately the evidence upon each side of the issues submitted, and to make fair comments thereon.

"XI. Exceptions should be abolished; it should be enough that due objection was interposed at the time the ruling in question was made.

"XII. An appeal should be treated as a motion for a rehearing or new trial or for vacation or modification of the order or judgment complained of, as the cause may require, before another tribunal. . . .

"As a corollary:

"Upon any appeal, in any sort of cause, the court should have full power to make whatever order the whole case and complete justice in accord with substantive law require, without remand, unless a new trial becomes necessary."

J. W. G.

ADMINISTRATION OF CRIMINAL JUSTICE IN THE MAGISTRATES' COURTS OF NEW YORK.—The commission appointed by Governor Hughes of New York two years ago to inquire into the system and methods of procedure of the courts of inferior criminal jurisdiction in the cities of Buffalo, Rochester and New York has made a final report of its findings. A year ago it submitted a preliminary report covering the administration of justice in the magistrates' courts of Buffalo and accompanied the report with a proposed bill for a city court, which has since been enacted into law. The new court consists of a chief judge and five associate judges elected by popular vote, and is organized upon the general lines of the Chicago Municipal Court. As a result of the recommendations of the commission a detention home for children and suitable quarters for the various parts of the court, including the children's part, have been provided by the city. Among the other immediate reforms brought about through the establishment of the city court of Buffalo may be mentioned the elimination of the police station "morning courts"; the discontinuance of the custom of confining children in police station cells; the separation of the trials of male and female prisoners; the establishment of a part of the court for the hearing of cases involving domestic relations; and the unification and extension of the work of probation among minor offenders.

The commission was favorably impressed with the methods and organization of the police court in Rochester. In the city of New York, however, the commission found the calendar of the Court of Special Sessions of the First Division unduly congested, there being 5,858 untried bail cases on the docket on January 29, 1909, the court being then about eleven months in arrears with its business. The commission was shocked at the condition of the detention pens in this division

and declared that they were a disgrace to a civilized community. In the Jefferson Market "pen" it found that "women were huddled together, young and old, first and hardened offenders, some innocent and subsequently discharged, and this women's pen immediately adjoins the men's pen, similarly crowded. On several occasions there were more prisoners than the pens could accommodate, even with all the crowding, and the prisoners, men and women indifferently, stood in front of and beyond these pens. Some of the prisoners were engaged in loud talking, and the young and aften the innocent were subjected to the indignity of being compelled to hear vile and blasphemous language."

To such places were brought large numbers of respectable persons, not charged with any offense involving moral turpitude, but merely with the breach of some regulative law or ordinance. In the Essex Market court conditions were but little better and had, in fact been notoriously bad for years. And so with most of the others, both in the boroughs of Manhattan and Brooklyn, where, in some cases, conditions were not only reprehensible, but intolerable.

The remedy, in the judgment of the commission, is the separation, as completely as practicable, of the detention pens for women and men and the erection of court houses in the future with regard to more suitable places of detention for both sexes. The arrangement of court rooms and the procedure of the courts were the subject of severe criticism by the commission.

The general plan of the court room was described as follows:

"There is a magistrate's bench, behind which sit the magistrate, the police clerk, police clerk's assistants, the stenographer and the interpreter. In front of the bench is a raised platform, behind which is a rail. The platform has long been called, in the parlance of these courts, 'the bridge.' The complainant, who is in most instances a police officer, stands on 'the bridge,' close to the magistrate. The prisoner stands below the rail, or, as it is called, below 'the bridge.' The police clerk's assistants, who sit at one side of the magistrate, are preparing the complaints, and for that purpose necessarily engage in conversation with the complainant and his witnesses. At the other side of the magistrate the police clerk is receiving money in payment of fines and making a record of such receipts. Beyond 'the bridge' is a space where prisoners about to be arraigned, and the policemen who have made the arrests, are ordinarily waiting in line until their cases come before the magistrate. Beyond this space is a railing or grating separating it from the general public

"The ordinary scene in the magistrate's court is one of confusion and often lack of dignity, resulting from the noise of conversation between complainants, witnesses, and court clerks, and this noise not infrequently interferes with the orderly conduct of the case under hearing before the magistrate. While the hearing is going on, the complaining witness, in most instances a police officer, stands close to the bench, with his back to the defendant, often giving his statement or testimony in a voice so low that the defendant, when he is below 'the bridge,' cannot possibly hear him; the magistrate himself likewise frequently speaks in tones so subdued as to be inaudible to the prisoner, with the result that the policeman who is stationed on 'the bridge' plays entirely too important a part, frequently conveying in laconic sentence to the prisoner the nature of the charge and the questions of the judge, and then conveying back to the judge the mumbled answers of the prisoner. On a number of occasions it was apparent to the commission that the prisoner did not know what was going on,

and that the hearing was one only in name. There being no witness chair, the whole proceeding lacks even the semblance of judicial procedure. Frequently there are so many persons on and around the bridge that it is almost impossible for the prisoner to see the magistrate. The interior arrangement of these court rooms thus briefly described, and this method of conducting hearings, are disgraceful in an enlightened community and should be forthwith ended once and for all. The rearrangement of these court rooms so as to abolish 'the bridge' and give the prisoner the same opportunity to hear and be heard as the witnesses against him, would involve a comparatively small expenditure and would bring about a substantial improvement in the method and manner of conducting hearings and examinations in the magistrates' courts."

Such an arrangement, says the commission, is not conducive to a full and fair hearing. These courts are practically tribunals of last resort in most instances, and the examination or trial of the defendant should be conducted in such a manner and surrounded with such safeguards as to assure a full, fair and deliberate hearing. Some of the court houses are badly situated, are lacking in accommodations, poorly ventilated, and in some instances the foul air from the cells below constantly comes up into the court rooms above. Many of the court officers, though not all, were found to be discourteous, brusque and even impertinent to the general public having business of one kind or another in these courts.

The accommodations for the children's court of the First Division were found to be entirely inadequate. Arrangements should be made, said the commission, by which each child's case can be heard by itself and privately without the presence of a curious crowd, so that the judge may come into close parental relation with the youthful offender. On this point the commission says:

"Among the children brought to this court are many who are charged with serious offenses, such as breaking into cars, picking pockets, etc. A considerable proportion of these children cannot be dealt with successfully if the court and its proceedings impress them as too gentle and amiable. Besides, in very many instances, it is the effort of the court not merely to control the child, but to impress responsibility upon the parent. Many of these parents are of foreign birth, who have recently immigrated to this country and who have much respect for dignified forms, and it is the opinion of experienced judges that their success in dealing with children's cases would be impaired if the formal surroundings of the court room were taken away. There should be no difficulty, however, in so constructing the court room that the child can come even physically closer to the judge than at present, and that the space in front of the judge's bench can be more conveniently arranged. It seems clear, also, that after a child has been placed on probation, a closer personal relation can be aided by the judge hearing the child and conversing with it in a direct way in some room other than the court room, and where the interview may be private."

In the Court of Special Sessions of the First Division the commission found an utter lack of supervision over the clerk's office and the court was far behind with its work, partly because of failure to try bail cases in the summer months, partly because of the increase in the number of cases and partly because of inadequate clerical assistance. Speaking of these conditions, the commission said:

"The long delays have resulted in many instances in a practical denial of justice either to the prosecution or to the defense; and in others, in a practical

nullification of laws enacted for the peace and safety of the community. Witnesses have died, disappeared or removed; penalties imposed by statute upon conviction have not attached; and because of the immunity occasioned by delay, certain classes of misdemeanors have been repeated with impunity."

The necessity for greater centralized responsibility in the judicial system, such as characterizes the organization of the higher courts of the state and which is one of the principal features in the organization of the Chicago Municipal Court, was dwelt upon by the commission. The responsibility for the administrative work of the court, it said, should be fixed upon a chief judge, who should establish and supervise a system for the opening of the various parts of the court and for the attendance of the judges, clerks, and other employees, and should establish and supervise a system for keeping the records of the court and the calendars in proper condition. Police officers detailed to attend to the court should be withdrawn and in their place civilian attendants, under the control of the magistrates, should be substituted. The latter would prove more considerate and courteous and the withdrawal of the policemen would remove a constant source of friction.

Concerning the Night Court, created in 1907 mainly for the purpose of removing the evil of the station house bond, the testimony before the commission was conflicting. While the business of the professional bondsman has been largely broken up, his place has been taken by the keepers of disreputable hotels and the proprietors of assignation houses, who have working arrangements with prostitutes to pay their fines in return for patronage in bringing men to their resorts. Nevertheless, the commission believes that the Night Court has been of much service in making it possible for persons arrested in the evening for minor offenses to secure a prompt hearing and, if released, be able to return to their work the next day without running the chance of being discharged from their employment. The cases tried before this court are very numerous, not infrequently upwards of 100 persons waiting to be heard, and some nights they are disposed of at the rate of one per minute. In the opinion of the commission there should be two such courts in the First Division, one for men and one for women, and they should open at 7 o'clock in the evening instead of 9 o'clock as now, and should remain open until 3 o'clock in the morning.

In regard to the methods of dealing with prostitutes the commission found no uniformity of policy. Some magistrates pursue a practically consistent course of sending offenders to the workhouse; others with equal consistency impose fines; others discharge them; while nearly all place on probation those whose cases suggest possibilities of reform. The commission recommended that where a woman is convicted of prostitution, she shall be examined by a woman physician detailed by the board of health, and if found suffering from a venereal disease, the magistrate shall commit her until she is cured.

The commission heard many complaints of the conduct of a certain class of lawyers who impose on the poor and ignorant in the magistrates' courts, but in view of the impossibility of prescribing a remedy by statutory enactment, it expressed the opinion that improvement in the situation must come from constant supervision and appropriate regulation, such as would be possible under the system of centralized responsibility to which reference is made above.

Among other recommendations of the commission are: The installation of a complete system of records and statistics; a further extension of the system

of children's courts, and the extension of the period of probation for children to three years and for adults to two years.

In conclusion, the commission dwells upon the importance of the police courts in American life (about 300,000 people are annually brought before these courts in the city of New York alone), a part of the judicial system which, in our opinion, has already been too long neglected. "Trite as the expression may be," said the commission, "we may well repeat that the humble, the defenseless and the ignorant gain their impressions of American institutions in a large degree from these judges and courts, and to them these are the courts of last resort. Whether they shall be convinced that justice is patient and even-handed, rests almost entirely upon the treatment they receive from these courts and judges. It is not enough to discharge mechanically, though conscientiously, the daily duty, but the judge should contribute his share to the study and the solution of the many complexities of city life in regard to which he has, perhaps, even greater opportunities of observation than any other public officer. There should be a spirit of coöperation, a desire to undertake the solution of some of these problems, and we are confident that if this spirit generally animated these judicial officers, they would find a greater tendency on the part of the public to accord to them the respect and confidence which their important and dignified offices and duties should command." J. W. G.